

**BEFORE THE
FEDERAL MARITIME COMMISSION**

COMBUSTION STORE LIMITED,)	
)	
Complainant,)	
)	
v.)	Docket No. 15-02
)	
UNIGROUP WORLDWIDE – UTS,)	
)	
Respondent.)	
_____)	

**RESPONDENT UNIGROUP WORLDWIDE, INC.’S
MOTION TO DISMISS THE
COMPLAINT OF COMBUSTION STORE LIMITED**

Respondent UniGroup Worldwide, Inc.¹ (“UniGroup”), by its attorneys, hereby moves the Presiding Administrative Law Judge to dismiss the Complaint of Combustion Store Limited (“Combustion”), served on May 4, 2015, for failure to state a claim upon which relief can be granted and for lack of subject matter jurisdiction.² In summary, this Motion contends that the Complaint does not on its face describe in any way the “practices” or “regulations” of UniGroup that Combustion contends violate the Shipping Act, and does not assert facts indicating that the subject cargo moved in ocean commerce. 46 U.S.C. § 41102(c). Moreover, the central issue in Combustion’s Complaint, the alleged transfer of ownership of maintenance records (“log books”) required by federal law and regulation for aircraft and aviation components, is regulated

¹ Incorrectly referred to as “UniGroup Worldwide – UTS” in the Complaint.

² The Commission’s Rules of Practice and Procedure do not specifically address motions to dismiss. However, those Rules do provide that where there is no applicable Commission Rule, the Commission applies the Federal Rules of Civil Procedure (“Federal Rules”) “to the extent they are consistent with sound administrative practice.” 46 C.F.R. § 502.12. Motions to dismiss may therefore be filed in Commission proceedings and should be evaluated under Commission precedent and federal court standards. This motion is filed pursuant to the general requirements affecting dispositive motions, Rules 69 and 70. 46 C.F.R. §§ 502.69 and 502.70.

exclusively by the Federal Aviation Administration (“FAA”) of the U.S. Department of Transportation. If, as Combustion seeks, the Commission were to define “just and reasonable” practices for handling, shipping or otherwise transporting aviation log books, it would impinge on the lawful jurisdiction of the FAA in a highly technical area, an area in which the Commission has no particular expertise and for which it has no mandate from Congress. Federal regulations impose responsibilities on aircraft and aircraft component owners to transfer aviation log books. *See generally* 14 C.F.R. § 91.419. If Combustion was damaged by an alleged failure to transfer aviation log books, its remedy or recourse lies against the prior owner before the FAA or in courts of appropriate venue and jurisdiction – not in a proceeding against Unigroup before this Commission.

Finally, the narrative of the Complaint suggests strongly that Combustion is trying to exploit and extrapolate from a trend in recent Commission decisions to permit findings of section 41102(c) violations in contexts that involve non-systemic cargo claim matters. Nonetheless, the facts described in the instant Complaint would go well beyond even recent Commission jurisprudence on the scope of this provision to apply to a one-off, allegedly lost item cargo claim. The Complaint does not identify the act or failure to observe reasonable practices that would explain the causes of the claimed loss. Nor does the Complaint specify the role played by UniGroup, one of many intermediaries and/or common carriers involved in the transaction, that purportedly resulted in Combustion’s alleged non-receipt of the log books in questions. Indeed, it is not clear from the Complaint and its attachments that the missing log books even entered ocean commerce.

Cargo loss and damage claims are subject to contractual obligations stated in bills of lading and other shipping documents, as well as state and federal statutes designed to provide

prompt and predictable disposition of cargo loss and contractual disputes. Considered in a most forgiving and expansive context, Combustion's Complaint describes nothing more than a single, isolated instance of alleged cargo loss by one or more of several actors in a complex and attenuated shipping transaction for which there is no clear indication of ocean carriage. No decision of the Commission, even recent expansive readings of 46 U.S.C. § 41102(c)³, has held such an isolated and ill-defined event to be violative of the Shipping Act.

I. **The Factual Allegations of the Complaint do not Identify any Particular set of UniGroup Practices with Regard to the Movement of Aviation Log Books that are Alleged to Violate the Shipping Act's "Just and Reasonable" Standards.**

Combustion's unsworn, unverified Complaint charges UniGroup with a purported Shipping Act violation that allegedly resulted in the loss of value of two used aircraft engines shipped from the Atlanta, Georgia area to England in May 2012.⁴ The specific Shipping Act section invoked by Combustion is 46 U.S.C. § 41102(c), a provision that prohibits a failure "to

³ See, e.g., *DSW Int'l, Inc. v. Commonwealth Shipping, Inc.*, 2011 WL 7144019 (F.M.C. Mar. 29, 2011); *Yakov Kobel v. Hapag-Lloyd*, 2013 WL 9808671 (F.M.C. July 12, 2013); *Yakov Kobel v. Hapag-Lloyd*, 2015 WL 3465821 (F.M.C. May 26, 2015).

⁴ The Commission's Rules require complaints to be "sworn" and "verified." 46 C.F.R. § 502.62(a)(1) - (3). It appears from review of prior administrative case law that where, as here, a complaint is not verified, the absence of verification is not, in itself, fatal and is not an independent ground for dismissal. Complainants have been permitted to remedy such a defect through amendment. See, e.g., *Vinmar, Inc. v. China Ocean Shipping Co.*, 26 SRR 39-40 (ALJ 1991) (N.D. Kline). We would expect Combustion to do so here. However, that failure in this instance may have a bearing on whether or not the claim is time-barred, and UniGroup reserves the right to raise a statute of limitations defense, and indeed any defense, in an answer or other appropriate filing should this motion be denied. See, e.g., *Trident Seafoods Corp. v. Coastal Transp., Inc.*, 1991 WL 383098, at *5 (Sept. 16, 1991) (noting that delay between filing of original complaint and verified complaint "raises questions with respect to the . . . statute of limitations."). In any event, the unsworn, unverified Complaint places UniGroup at a decided disadvantage at an early stage of the proceeding in that there are numerous allegations in the Complaint that UniGroup believes are incorrect, but cannot, in formulating an answer, ascertain the source or veracity of the claim. For purposes of this motion, such unverified allegations should be afforded less weight on factual matters than averments which a person with personal knowledge of pleaded allegations has confirmed under oath to be true and correct.

establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.” The Complaint is notably vague and imprecise about the specifics of UniGroup’s actions and, more pointedly, UniGroup’s alleged failure “to establish, observe, and enforce just and reasonable regulations and practices” Instead, the Complaint generally describes a complex international shipping transaction in which the two used aircraft engines were transported from the United States to England, moving through a chain of multiple forwarders, brokers, warehouse providers, ocean freight forwarders, non-vessel operating common carriers, and at least one domestic U.S. motor carrier. Compl. ¶¶ IV.D.-K. As previously noted, the source of Combustion’s alleged injury is the contention that, while the two used aircraft engines described in the underlying shipping documents were delivered to Combustion, associated log books that record the maintenance history of the engines were not received, thus substantially diminishing the value of the engines. Compl. ¶¶ IV.N., IV.V. Combustion prays for reparations in the amount of \$397,517, plus interest and attorneys’ fees. Compl. ¶ VI.

However, Combustion explicitly acknowledges at several points in the Complaint that underlying shipping documents make no mention of the missing log books. Compl. ¶¶ IV. I., J., M.; Exs. 2, 3. The Complaint also refers to, but does not attach, a Bill of Lading issued by Carotrans, an NVOCC involved with this transaction.⁵ Like Exhibits 2 and 3, the Carotrans bill records two aircraft engines as constituting the entire shipment, and contains no mention of log books. The Complaint cites no contract or document binding UniGroup to transport, no commitment by UniGroup to transport, and no obligation to transport, the missing log books. All

⁵ A copy of the front and back sides of the Carotrans Bill of Lading are attached hereto as Exhibit A.

proffered or cited documents in the Complaint describe the shipment as consisting only of the two used aircraft engines.⁶ Put simply, the Complaint, when weighed along with its exhibits, fails to state how UniGroup allegedly violated 46 U.S.C. § 41102(c) and, no doubt inadvertently, provides support for the conclusion that the log books never entered ocean commerce.⁷

Combustion (the ultimate recipient of the engines), John Bone (the owner of the engines prior to transfer to Combustion),⁸ Excel Turbines (“Excel”) (the party storing the engines for Mr. Bone), and Complainant’s chosen NVOCC, Connexion, all had direct involvement and responsibility for shipment of the engines. The previously mentioned Carotrans is identified by Combustion as having contracted with a motor carrier broker, MIQ Logistics, LLC, “to arrange for inland pick-up and delivery. . . .” Compl. ¶ IV.K. Combustion further states that MIQ

⁶ In federal motion practice seeking dismissal of complaints under Federal Rule of Civil Procedure 12, exhibits supersede mere allegations and are afforded greater weight in the event of variance with bare allegations. *See, e.g.*, 5C Wright & Miller, Federal Practice and Procedure: Civil 3d § 1363 (“The district court will not accept as true pleading allegations that are contradicted by facts that can be judicially noticed or by other allegations or exhibits attached to or incorporated in the pleading”) (footnotes omitted). This is particularly true in a situation like this one where the Complaint does not comply with the Commission’s verification requirements and where many of the averments of the Complaint are legal contentions, rather than factual allegations.

⁷ This second point – that the log books never entered ocean transportation – also speaks to this Commission’s subject matter jurisdiction, which is discussed further below. *See infra* section II.A.

⁸ While not material for purposes of disposing of this motion, UniGroup believes Mr. Bone to be the prior owner of the engines. The Complaint identifies Excel as the prior owner. Compl. ¶ IV.A. UniGroup’s understanding is that Excel was acting for Mr. Bone and providing warehouse storage prior to shipment.

Logistics “engaged the services of a motor carrier, Southeastern Freight Lines (“SEFL”), to pick up the shipment and deliver it to Carotrans’s agent in Atlanta.” *Id.*⁹

According to the Complaint, a truck driver loaded the engines on or about May 4, 2012. *Id.* at ¶ IV.E. The Complaint avers that an officer of Excel handed the driver an unlabeled box alleged to contain the log books. *Id.* at ¶¶ IV E., F. There is no factual allegation in the Complaint that UniGroup personnel were present at the scene of the handover of the engines by either the prior owner of the engines and/or his origin warehouse releasing representatives to the motor carrier. With shipping documents in hand that did not mention the log books, Excel appears from the Complaint to have allowed the truck driver to leave Excel’s premises without any documentation accepting the log books for transport, not even documentation confirming the driver’s receipt of the log books. The carelessness that the Complaint alleges, and the only carelessness that reasonably may be inferred from the Complaint, was that of the prior owner of the engines, and/or the origin warehouse tendering the engines (Excel).¹⁰

The Complaint alleges that UniGroup knew that the log books were to be included with the engines in transit. Compl. ¶ IV.Q. However, the shipping documents tendered with the Complaint indicate that the piece count for the shipment was “2” used aircraft engines. There is

⁹ The Complaint is not explicit about the geography of the alleged interaction between the motor carrier and the owner of the engines, but recites that the engines started their transit to England “from a warehouse in Georgia” (Compl. ¶ IV.A.) and refer to a “driver” picking up the engines at an unidentified facility, presumably Excel’s Georgia warehouse (Compl. ¶ IV E.). Although the Complaint refers to the driver as “UniGroup’s representative” (Compl. ¶ IV E.), “UniGroup’s subcontracted driver” (Compl. ¶ IV. F.) and “UniGroup’s driver” (*id.*), these characterizations rely on conclusory and contestable legal categorizations, not “clear and concise factual statement(s)” that are the appropriate content of a complaint, whether before the FMC or a federal court. FMC Rule 63(a)(3)(iii)); Fed. R. Civ. P. 8.

¹⁰ This is particularly so when considered along with an aircraft or aircraft engine owner’s legal obligation to transfer log books when an aircraft or aircraft engine is sold. *See infra* section II.B.

no shipping documentation that has been produced to support that any other items were to be included or were included. As best as can be discerned from the Complaint and reasonable inferences therefrom, UniGroup did not know of, and Combustion, Connexion, John Bone/Maritime Air Charters, and Excel did not inform UniGroup of, the existence of a “box” or its contents. Compl. ¶¶ IV. A, E, F, H. The Complaint is devoid of references to UniGroup ever seeing, handling, storing or otherwise having the log books in its possession.¹¹

The Complaint does not allege that Combustion undertook any efforts to find and/or to retrieve or recover the log books once their absence was noted. Rather, the Complaint alleges that Combustion merely “stored the engines for as long as feasible.” *Id.* at ¶ IV. O. Combustion alleges that the engines had a value of approximately \$395,000 with the log books but that without the log books were scrapped for a value of \$1,900 and seeks the difference between these two sums as damages. Compl. ¶ V.

Dismissal for failure to state a claim is appropriate where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory. *Hartmann v. California Dep’t of Corr. and Rehab.*, 707 F.3d 1114 (9th Cir. 2013). Combustion’s Complaint

¹¹ As referenced in note 7, *supra*, this fundamental defect in the complaint is awkwardly camouflaged by general assertions of legal conclusions concerning agency and contract relationships between UniGroup and other participants in the movement. Compl. at ¶ IV.W-Y. However, these characterizations of legal relationships are subject to dispute. A complaint fails to satisfy Rule 8(a) “notice” pleading and therefore warrants dismissal under Rule 12(b)(6) when it does not “contain sufficient *factual* matter . . . ‘to state a claim for relief that is *plausible* on its face.’” *Ashcroft v. Iqbal*, 555 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)) [emphasis added]. A claim “has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 663. “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 554. The reviewing court is not “bound to accept as true a legal conclusion couched as a factual allegation.” *Id.* at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

on its face fails to describe Shipping Act violations or to identify any “regulations” or “practices” of UniGroup that violate section 41102(c)’s prohibition against failing to maintain reasonable practices and thus fails to meet the Commission’s minimum pleading standards. The Complaint generally fails to state any cognizable cause of action under the Shipping Act that would justify further proceedings in this matter.

The bare allegations of the Complaint establish nothing about UniGroup’s practices or actions that places them within the ambit of a violation of section 41102(c). That statute has an extensive history. Its scope has been the subject of considerable discussion at the full Commission level in recent years.¹² Nonetheless, even the expansive interpretation of section 41102(c) adopted by a majority of the sitting Commissioners in these recent cases does not go so far as to impute a violation of section 41102(c) by virtue of ascribing to it responsibility for a single act of alleged negligence at some unspecified point in a multi-party intermodal transaction. Combustion has *not* alleged that UniGroup received, handled, stored, or delivered the missing log books. Instead the Complaint simply waves buzzwords about legal concepts such as “prime contractor,” and “subcontractor” without providing UniGroup or the Presiding Officer a hint of what UniGroup’s actual role was or should have been, or what “practices” and “regulations” UniGroup should have established to govern shipment of aviation log book

¹² See, e.g., *Yakov Kobel*, 2013 WL 9808671. In *Kobel*, the Commission found, in a 3-2 decision, that “[a] common carrier, MTO, or OTI can establish just and reasonable regulations and practices that are applicable to all their potential customers, but may still fail to observe and enforce the established regulations and practices with respect to a single shipment, a single transaction, or a single shipper.” *Id.* at 11. The dissent disagreed, writing “it simply tortures the statute’s words, legal reason, and logic to embrace an ultimate conclusion [] that a single act or omission . . . [is] within the subject matter jurisdiction of the Commission.” *Id.* at *11. Last month, the Commission issued a second order in *Kobel*, affirming the initial decision on remand. 2015 WL 3465821 (F.M.C. May 26, 2015).

records. Compl. ¶¶ IV.X.-Y. This overriding defect in the pleadings not only deprives UniGroup of sufficient information to form a proper defense, it also leads to a separate ground on which we rest this motion – that the requested relief would require the Commission to examine the function and purposes of federal statutes governing transfer of aviation log books and to define standards and procedures (“regulations and practices”) that govern those shipments to ascertain that UniGroup or any other participant in the shipment had failed to meet statutory standards. This, we submit, the Commission cannot do, particularly where aviation records are so minutely regulated by other agencies under other statutes.

II. The Commission Lacks Subject Matter Jurisdiction to Hear this Dispute.

Faced with a motion to dismiss under Rule 12(b)(1) for lack of subject-matter jurisdiction, “[a] plaintiff bears the burden of establishing by a preponderance of the evidence that the Court possesses jurisdiction.” *Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc.*, 2011 WL 7144008, at *26 (F.M.C. 2011) (quoting *Citizens for Responsibility & Ethics in Wash. v. United States Dep’t of Homeland Sec.*, 527 F. Supp. 2d 101, 104 (D.D.C. 2007)). The Commission must presume that it lacks subject-matter jurisdiction until Plaintiff, as the party seeking to invoke the jurisdiction, establishes otherwise. *Id.* at *27 (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). A 12(b)(1) motion may assert either a facial or factual attack on jurisdiction. In this instance, UniGroup is asserting both.

A. The Complaint does not state and advances no documentation to support that the log books moved in ocean commerce.

A factual attack challenges “the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits, are considered.” *Global Link Logistics, Inc. v. Hapag-lloyd AG*, 2014 WL 5316345, at * 10-11

(FMC: Served Apr. 17, 2014) (quoting *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1260 (11th Cir. 2009)). When a defendant makes a Rule 12(b)(1) motion challenging the factual basis of subject matter jurisdiction, courts have required the plaintiff to bear the burden of proving that jurisdiction exists. *The Lake Charles Harbor and Terminal Distr. v. W. Cameron Port, Harbor and Terminal Distr.*, 2007 WL 2468431, at *4 (F.M.C. Served: Aug. 2, 2007) (citing *Richmond, Fredericksburg & Potomac R. Co. v. U.S.*, 945 F.2d 765, 768 (4th Cir. 1991)).

When subject matter jurisdiction is at issue, courts are permitted to consider evidence outside the pleadings without converting the motion to dismiss into a motion for summary judgment. *See id.* (citing *Coalition for Underground Expansion v. Mineta*, 333 F.3d 193, 198 (D.C. Cir. 2003)). “Once the moving party has converted the motion to dismiss into a factual motion by presenting affidavits or other evidence properly brought before the court, the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction.” *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n. 2 (9th Cir. 2003) (internal citation omitted).

The Complaint on its faces makes no allegation that the log books were transported in the ocean commerce of the United States. No allegation in the Complaint, no exhibit to the Complaint, no contract, no bill of lading, and no other document establish the transport of the log books “by water” or by “ocean commerce.” To the contrary, the Master Bill of Lading and the Bill of Lading attached as Exhibits 2 and 3 are concededly silent about the presence of any log books with the shipment of the engines. The piece count on those documents shows “2.” Two pieces were delivered and signed for at destination.

In addition, there is no support for the allegations that an “agent” or “subcontractor” of an OTI took possession of the log books from the seller. UniGroup attaches to this Motion, as

Exhibit B, the affidavit of James A. Goswick, the SEFL truck driver who picked up the aircraft engines from Excel. While the unsworn, unverified allegations of the Complaint state that Excel's representative spoke to a driver, presumably Mr. Goswick, about the log books, and that he stated that the log books would ride in the truck cab with him, Mr. Goswick's sworn affidavit states otherwise. *See* Ex. B, p. 1. According to Mr. Goswick, he "did not receive or take possession of a box with paper logs." *Id.* at 1. His statement is supported by the SEFL bill of lading makes no reference to log books. *See* Compl. Ex. 3. Thus, the Complaint provides no evidence to corroborate what is an essential fact to establish the Commission's jurisdiction – namely, that the log books did, or were meant to, enter ocean transportation.¹³

B. The Transfer of Aviation Records is Subject to Comprehensive Regulation by the FAA.

Presented with a facial attack, the court examines whether the complaint has sufficiently alleged subject matter jurisdiction, construing the complaint in the light most favorable to the plaintiff, and accepting all well-pled allegations in the complaint as true. *Global Link Logistics, Inc.*, 2014 WL 5316345, at * 10-11 (internal citation omitted). On a facial attack, the court employs standards similar to those governing Rule 12(b)(6) review for failure to state a claim. *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1335 (11th Cir. 2013).

Pursuant to the Federal Aviation Act of 1958, the FAA is charged with the exclusive authority to implement and enforce FAA Regulations ("FARs") in order to ensure the safety of civil aviation in the national airspace system. One way in which the FAA accomplishes this goal is to require owners and operators of aircraft and aircraft engines to adhere to specific, detailed

¹³ Further, as noted herein, *see infra* section II.B., the legal obligation was on the *seller* to deliver the log books to the buyer. 14 C.F.R. § 91.419. That obligation cannot be imputed to UniGroup.

maintenance record keeping requirements. Under the FARs, each owner or operator of aircraft engines is required to keep records of maintenance, preventive maintenance, and alteration of those engines as well as records of all applicable inspections of those engines.¹⁴ In addition, the maintenance records must include, *inter alia*, the total time the engine has been in service, the status of any life-limited parts on the engine and the current status of any applicable airworthiness directives and safety directives regarding the particular engines. For regulatory compliance and safety purposes, all maintenance records must be available for FAA and National Transportation Safety Board inspection. These maintenance records are generally referred to in the aviation industry as aircraft log books or engine log books and are vital for determining the compliance history and airworthiness of the aircraft, engines, propellers, and aircraft accessories. *See generally*, FAA Advisory Circular, *Maintenance Records* (1998).

The FAA regulates the content and transfer of log books. Under the FARs, the FAA imposes a duty upon an owner who transfers a U.S.-registered aircraft or aircraft engine to transfer log books to the purchaser at the time of sale. 14 C.F.R. § 91.419. According to the Complaint, Excel, who UniGroup believes was acting as a representative of the prior owner, tendered to a truck driver one or more log books in a box and inquired whether the driver would affix a label to the small box for shipment by **air cargo** using FedEx or UPS. Compl. ¶ IV.F. At the time of this alleged tender, the two engines were already packed for aircraft engine shipment¹⁵ and copies of shipping documents attached to the Complaint (Exhibits 2 and 3) list

¹⁴ *See, e.g.*, 14 CFR § 91.419.

¹⁵ The Complaint does not specify whether or how the engines were packed for shipment. The driver's declaration, provided as Exhibit B, however, states that the engines were each in crates with steel bars and straps.

the two aircraft engines with no mention of the separate box of log books.¹⁶ However, even accepting as accurate for purposes of this Motion the factual allegations of the Complaint, the prior owner of the engines and log books (or its representative), apparently did not fulfill its FAA regulatory duty by tendering the log books to the SEFL truck driver, and by permitting him to leave Excel's premises without a contractual agreement with SEFL for the shipment of the engine log books **by air**.

The FAA is authorized to, and does, impose civil penalties on owners/sellers for failure to transfer log books to purchasers in accordance with the owner/seller's duty as set forth in 14 CFR § 91.419. A prior owner's failure to transfer log books to a purchaser is a matter primarily within the purview and jurisdiction of the FAA, not this Commission.

FAA regulations require that the log books be retained by the "owner or operator" and must be made available for inspection by the FAA and/or the National Transportation Safety Board.¹⁷ In this respect, it is standard and prudent industry practice to make specific arrangements by contract, at the time of sale, for the delivery of the log books.¹⁸ There is no evidence that any such arrangements were made here. Consistent with 14 CFR § 91.419,

¹⁶ See also Ex. A. Aircraft engines are generally shipped in special purpose containers designed to carry the **engines only**, not any other items, such as a box of log books, which could cause irreparable damage to the aircraft engine while in transit.

¹⁷ 14 CFR § 91.417.


¹⁸ See Aircraft Owners and Pilots Association, Sample Aircraft Purchase/Sales Agreement, Section 6 (undated), available at: <http://www.aopa.org/Pilot-Resources/Aircraft-Ownership/Sample-Purchase-Sales-Agreement>; see also Aircraft Purchase Agreement between M.D.C. Holdings and Cardal, Inc., Section 7 (Apr. 3, 2007), available at: <http://www.sec.gov/Archives/edgar/data/773141/000119312507170419/dex101.htm>.

recovery for the failure to make such arrangements should be sought from the prior owner, not UniGroup.

In conclusion, the Complainant is asking this Commission to require ocean carriers to establish practices relating to custody and delivery of highly technical records – log books – that are regulated by federal law and regulations administered by the FAA. Those regulations establish duties on sellers pertaining to the delivery of log books at the time of sale. There is no room in this comprehensive regulatory system for another agency of the U.S. government to establish different and conflicting duties on the named respondent, one of many intermediaries and/or common carriers involved in the underlying transaction to relocate two used aircraft engines.

For all of the reasons stated above, UniGroup moves that Combustion's Complaint be dismissed with prejudice.

Respectfully submitted, this 19th day of June 2015, by:


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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon counsel for Complainant (Sean C. Griffin and Richard D. Gluck) via electronic mail and by mailing a copy via the US Postal Service.

Dated at, 2:00 p.m. this 19th day of June, 2015.

A handwritten signature in cursive script, appearing to read "Deona DeClue", written over a horizontal line.

Deona DeClue
For Respondent,
UniGroup Worldwide, Inc.

EXHIBIT A



REMIT TO: CAROTRANS INTERNATIONAL, INC.
100 WALNUT AVE., SUITE 202
Clark, NJ 07086

PHONE: (732) 540-8100 Page 1 of 1
FAX: (732) 540-8123

BILL OF LADING

SHIPPER/EXPORTER (COMPLETE NAME AND ADDRESS) UNIGROUP WORLDWIDE.UTS 3727 ROSE LAKE DRIVE SUITE # 100 CHARLOTTE, NC 28217 Phone: 704-423-9994		BOOKING NO. ATLLON1219004 CLT	BILL OF LADING NO. ATLLON1219004
CONSIGNEE NAME/ADDRESS (NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER) CONNEXION WORLD CARGO LTD. UNIT 3 LANGASTER COURT EXETER AIRPORT CLYST HONITON EXETER DEVON EX5 2DP UNITED KINGDOM DANIEL GREGORY, Phone: 441392 449300 Fax: 441392 449303		EXPORT REFERENCES CUST REF #: 840677 840677	
FORWARDING AGENT, F.M.C. NO. UNIGROUP WORLDWIDE.UTS 3727 ROSE LAKE DRIVE SUITE # 100 CHARLOTTE, NC 28217 Phone: 704-423-9994 Fax: .		21Q0316	
POINT AND COUNTRY OF ORIGIN OF GOODS USA		FOR DELIVERY PLEASE APPLY TO: CARGO MARKETING SERVICES LTD OCEAN HOUSE MARSTON PARK EORI: 870014571000 TAMWORTH, STAFFS, B78-3-HU Phone: 44 1827 300060 Fax: 44 1827 311120	
PRE-CARRIAGE BY: NEWMAN, GA	PLACE OF RECEIPT BY PRE-CARRIER ATLANTA	CONTAINER HDMU6383649	FILE # 29575
VESSEL APL INDONESIA19 E	PORT OF LOADING CHARLESTON	Seal Number A5322816	
PORT OF DISCHARGE LONDON	PLACE OF DELIVERY BY ON CARRIER	LOADING PIER/TERMINAL	
		NUMBER OF ORIGINALS EXPRESS RELEASE	

PARTICULARS FURNISHED BY SHIPPER

PARTICULARS FURNISHED BY SHIPPER				
MARKS & NOS/CONTAINER NOS.	NO. OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT	MEASUREMENT
AS ADDRESSED	2	PALLETS NON-HAZ, USED ROLLS ROYCE AIRCRAFT ENGINES HS CODE: 8802.20 FREIGHT PREPAID EXPRESS RELEASE	3,527.000 LB	273.200 CF
NON-NEGOTIABLE				
Total Number of Packages	2	These commodities, technology, or software were exported from the United States in accordance with the export administration regulations. Diversion contrary to U.S. law prohibited.	3,527.000 LB 1,599.837 KG	273.200 CF 7.736 CM

The declared value of the GOODS is \$

AES: X20120516015751

If the MERCHANT enters the actual value of the GOODS and pays the applicable ad valorem rate, the CARRIER'S PACKAGE limitation will not apply. (See Clause 21 on the next page)

CHARGES INCLUDING FREIGHT	BASIS	RATE	PREPAID	COLLECT
OCEAN FREIGHT	W/M	71.00	549.26	
BILL OF LADING	L	7.00	7.00	
ENS DOC FEE	L	7.00	7.00	
INLAND# 19576517	L	191.73	191.73	
			TOTAL	TOTAL
			\$754.99	

THE RECEIPT, CUSTODY, CARRIAGE AND DELIVERY OF THE GOODS ARE SUBJECT TO THE TERMS APPEARING ON THE FACE AND BACK HEREOF AND TO CARRIER'S APPLICABLE TARIFF OR SERVICE AGREEMENT.

Where applicable law requires and not otherwise, one original BILL OF LADING must be surrendered, duly endorsed, in exchange for the GOODS or CONTAINER(S) or other PACKAGE(S); the others stand void. If a "Non-Negotiable" BILL OF LADING is issued, neither an original nor a copy need be surrendered in exchange for delivery unless applicable law so states.

CaroTrans
As Carrier

Receipt for
Shipment Date: 5/19/2012

By:

Seal Date: 5/19/2012

RECEIVED FOR SHIPMENT from the MERCHANT in apparent good order and condition, unless otherwise stated herein, the GOODS mentioned on the face of this Bill of Lading to be transported as provided herein, by any mode of transport for all or any part of the Carriage, "SUBJECT TO ALL THE TERMS AND CONDITIONS" appearing on the face and back hereof and in the CARRIER'S applicable Tariff(s) and/or Service Agreements, to which the Merchant agrees by accepting this Bill of Lading.

1. DEFINITIONS.

a) "Bill of Lading" as used herein includes conventional bills of lading, as well as electronic, express and laser bills of lading, sea waybills and all like documents, howsoever generated, covering the Carriage of Goods hereunder, whether or not issued to the Merchant.

b) "Carriage" means the whole or any part of the operations and services undertaken or performed by or on behalf of the Carrier with respect to the Goods.

c) "Carrier" means the Company named on the face side hereof and on whose behalf this Bill of Lading was issued, whether acting as carrier or bailee.

d) "Charges" means freight, deadweight, demurrage and all expenses and money obligations incurred and payable by the Merchant.

e) "Container" means any container (closed or open top), van, trailer, flatbed, transportable tank, railroad car, vehicle, flat, flatrack, pallet, skid, platform, cradle, sling-load or any other article of transport and any equipment associated or appurtenant thereto.

f) "Goods" means the cargo received from the shipper and described on the face side hereof and any Container not supplied by or on behalf of the Carrier.

g) "Merchant" means the shipper, consignee, receiver, holder of this Bill of Lading, owner of the cargo, or person entitled to the possession of the cargo, and the servants and agents of any of these, all of whom shall be jointly and severally liable to the Carrier for the payment of all Charges, and for the performance of the obligations of any of them under this Bill of Lading.

h) "On Board" or similar words endorsed on this Bill of Lading means that in a Port to Port movement, the Goods have been loaded on board the Vessel or are in the custody of the actual ocean carrier and, in the event of intermodal transportation, if the originating carrier is an inland or coastal carrier, means that the Goods have been loaded on board rail cars or another mode of transport at the Place of Receipt and/or are in the custody of a Participating carrier and en route to the Port of Loading named on the reverse side.

i) "Participating carrier" means any other carrier by water, land or air, performing any stage of the Carriage, including inland and coastal carriers, whether acting as sub-carrier, connecting carrier, substitute carrier or bailee.

j) "Person" means an individual, a partnership, a body corporate or any other entity of whatsoever nature.

k) "Vessel" means the ocean vessel named on the face side hereof, and any substitute vessel, leadership, barge, or other means of conveyance by water used in whole or in part by the Carrier to fulfill this contract.

2. CARRIER'S TARIFFS.

The Goods carried hereunder are subject to all the terms and conditions of the Carrier's applicable tariff(s) and/or Service Agreements which, if required, are on file with a regulatory body whose rules govern all or a particular portion of the Carriage and said terms and conditions are hereby incorporated herein as part of the Terms and Conditions of this Bill of Lading. Copies of the relevant provisions of the applicable tariff(s) are obtainable from the Carrier or concerned regulatory body upon request. In the event of any conflict between the terms and conditions of such tariff(s) and this Terms and Conditions of this Bill of Lading, this Bill of Lading shall prevail.

3. WARRANTY/ACKNOWLEDGMENT.

The Merchant warrants that in agreeing to the Terms and Conditions hereof, it is, or is the agent and has the authority of, the owner or person entitled to the possession of the Goods or any person who has a present or future interest in the Goods.

The Merchant acknowledges that the Carrier is a non-vessel operating common carrier ("NVOCC"), and that it neither owns nor charters vessels, as a result of which the Carrier, or any sub-carrier, connecting carrier or substitute carrier (which may be a NVOCC) will be required to contract with an actual ocean carrier to accomplish the Carriage contemplated by this Bill of Lading, and does so, its agent or the Merchant.

The Merchant further acknowledges that by identifying the carrying Vessel on the face side hereof, it knows or can determine the name of the actual ocean carrier and the terms and conditions of the actual ocean carrier's Bill of Lading and applicable tariff(s) and agrees to be bound thereby.

4. RESPONSIBILITY.

a) Except where the Carriage covered by this Bill of Lading is to or from a port or locality where there is in force a compulsory applicable ordinance or statute of a nature similar to the International Convention for the Unification of Certain Rules Relating to Bills of Lading, dated at Brussels, August 25, 1924, the provisions of which cannot be departed from, and suit or other

proceeding is instituted and lodged in such locality, this Bill of Lading shall have effect subject to the Carriage of Goods by Sea Act of the United States ("COGSA"), approved April 16, 1936, and nothing herein contained, unless otherwise stated, shall be deemed a surrender by the Carrier of any of its rights, immunities, exemptions, limitations or exonerations or an increase of any of its responsibilities or liabilities under COGSA or, as the case may be, such compulsorily applicable ordinances or statutes. The provisions of COGSA or such compulsorily applicable ordinances or statutes (except as otherwise specifically provided herein) shall govern before loading on and after discharge from the vessel and throughout the entire time the Goods or Containers or other packages are in the care, custody and/or control of the Carrier, Participating carriers or independent contractors (inclusive of all subcontractors), their agents and servants, whether engaged by or acting for the Carrier or any other person, as well as during the entire time the Carrier is responsible for the Goods. In the absence of compulsorily applicable legislation, COGSA shall apply.

b) The Carrier shall not be liable in any capacity whatsoever for any delay, non-delivery, mis-delivery or other loss or damage to or in connection with the Goods or Containers or other packages occurring at any time contemplated under subdivision a) of this Clause.

c) The Carrier shall, irrespective of which law is applicable under subdivision a) of this Clause, be entitled to the benefit of the provisions of Sections 181 through 186 and 188, Title 46, U.S. Code.

d) The rights, defenses, exemptions, limitations of and exonerations from liability and immunities of whatsoever nature provided for in this Bill of Lading shall apply in any action or proceeding against the Carrier, its agents and servants and/or any Participating carrier or independent contractor.

5. THROUGH TRANSPORTATION.

When either the Place of Receipt or Place of Delivery set forth herein is an inland point or place other than the Port of Loading or Port of Discharge (Through Transportation basis), the Carrier will procure transportation to or from the said inland and such inland point(s) or place(s) and, notwithstanding anything in this Bill of Lading contained, but always subject to Clause 4, hereof, the Carrier shall be liable for loss or damage of whatsoever nature and, however arising in the following extent, but no further:

a) Upon proof that the loss or damage arose during a part of the Carriage herein made subject to COGSA or other compulsorily applicable legislation, as set forth in Clause 4, a) hereof, said legislation shall apply; or

b) Upon proof that the loss or damage not falling within a) above, but concerning which the law of any country, state or subdivision thereof contains provisions that are compulsorily applicable and would have applied if the Merchant had made a separate and direct contract with the Carrier, a Participating carrier or independent contractor, as referred to in Clause 4, a), relative to a particular stage of transport or other handling wherein the loss or damage occurred and received as evidence thereof a particular receipt or other document, then the liability of the Carrier, Participating carrier and independent contractor shall be subject to the provisions of such law.

c) If it should be determined that the Carrier bears any responsibility for loss or damage occurring during the care, custody and/or control of any Participating carrier or independent contractor, and be subject to law compulsorily applicable to their bills of lading, receipts, tariffs and/or law applicable thereto, then the Carrier shall be entitled to all rights, defenses, immunities, exemptions, limitations of and exonerations from liability of whatsoever nature accorded under such bill of lading, receipt, tariff, and/or applicable law, provided however, that nothing contained herein shall be deemed a surrender by the Carrier of any of its rights, defenses and immunities or an increase of any of its responsibilities or liabilities under this Bill of Lading; the Carrier's applicable tariff or laws applicable or relating to such Carriage.

d) Except as hereinabove provided, the Carrier shall have no liability for damage to the Goods.

6. SUBCONTRACTING/BENEFICIARIES.

a) The Carrier shall be entitled to subcontract on any terms the whole or any part of the Carriage, loading, unloading, storing, warehousing, handling and any and all duties whatsoever undertaken by it in relation to the Goods or Containers or other packages of any other Goods.

b) It is understood and agreed that if it should be adjudged that any person or entity other than or in addition to the Carrier is under any responsibility with respect to the Goods or any other goods, regardless of the port or place where any loss or damage shall occur and without regard to whether the Goods covered hereby or any other goods are being handled or are damaged directly or indirectly during any handling, and even if the Goods or other goods are transported on free in, stowed and/or free out terms, all exemptions, limitations of and exonerations from liability provided by law or by the Terms and Conditions hereof shall be available to all agents, servants, employees, representatives, all Participating (including inland and coastal) carriers and all stevedores, terminal operators, warehousemen, crane operators, watchmen, carpenters, ship cleaners, surveyors and all independent contractors whatsoever, in contracting for the foregoing exemptions.

limitations of and exonerations from liability, the Carrier is acting as agent and trustee for and on behalf of all persons described above, all of whom shall to this extent be deemed to be a party to the contract evidenced by this Bill of Lading, regardless of whom, acting or by whom retained and paid, it being always understood that said beneficiaries are not entitled to any greater or further exemptions, limitations of or exonerations from liability than those that the Carrier has under this Bill of Lading in any given situation.

c) The Carrier undertakes to procure such services as necessary and shall have the right at its sole discretion to select any mode of land, sea or air transport and to arrange participation by other carriers to accomplish the total or any part of the Carriage from Port of Loading to Port of Discharge or from Place of Receipt to Place of Delivery, or any combination thereof, except as may be otherwise provided herein.

d) The Merchant agrees that the Carrier shall be deemed to be a beneficiary of the actual ocean carrier's bill of lading and of all exemptions, limitations of and exonerations from liability therein contained even though the Carrier acts as agent of the Merchant in contracting with the actual ocean carrier for the Carriage of the Goods. Notwithstanding, under no circumstances shall the Carrier be responsible for any damages to an extent greater than the actual ocean carrier or any beneficiaries thereof or hereof.

e) No agent or servant of the Carrier or other person or class named in subdivision b) hereof shall have power to waive or vary any of the Terms and Conditions hereof unless such waiver or variation is in writing and is specifically authorized or ratified in writing by an officer or director of the Carrier having actual authority to bind the Carrier to such waiver or variation.

7. MERCHANT'S RESPONSIBILITY/DESCRIPTION OF GOODS.

a) The description and particulars of the Goods set out on the face hereof or any description, particular or other representation appearing on the Goods or documents relating thereto are furnished by the Merchant and the Merchant warrants to the Carrier that the description, particulars and any representation made including, but not limited to, weight, content, measure, quantity, quality, condition, marks, numbers and value are correct.

b) The Merchant warrants that it has complied with all applicable laws, regulations and requirements of Customs, Port and other Authorities and shall bear and pay all duties, taxes, fines, imposts, expenses and losses incurred or suffered by reason thereof or by reason of any illegal, incorrect or insufficient marking, numbering, addressing or any other particular relative to the Goods.

c) The Merchant further warrants that the Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and in compliance with all laws, regulations and requirements which may be applicable.

d) No Goods which are or may become dangerous, inflammable or damaging or which are or may become liable to damage any property or person whatsoever shall be tendered to the Carrier for Carriage without the Carrier's prior express consent in writing and without the Container or other covering in which the Goods are to be transported being distinctly marked on the outside thereof so as to indicate the nature and character of any such articles and so as to comply with all applicable laws, regulations and requirements. If any such articles are delivered to the Carrier without such written consent and marking or if in the opinion of the Carrier the articles are or are liable to become of a dangerous, inflammable or damaging nature, the same may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Merchant and without prejudice to the Carrier's right to Charges.

e) The Merchant shall be liable for all loss or damage of any kind whatsoever, including but not limited to contamination, soiling, detention and demurrage before, during and after the Carriage of property (including but not limited to Containers) of the Carrier or any person or vessel (other than the Merchant) caused by the Merchant or any person acting on its behalf or for which the Merchant is otherwise responsible.

f) The Merchant and the Goods themselves shall be liable for and shall indemnify the Carrier, and the Carrier shall have a lien on the Goods for all expenses of mending, repairing, fumigating, repacking, cooping, baling, reconditioning of the Goods and gathering of loose contents, also for expenses for repairing Containers damaged while in the possession of the Merchant, for demurrage on Containers and any payment, expense, fine, dues, duty tax, import, loss, damage or detention sustained or incurred by or levied upon the Carrier, Vessel or any action or requirement of any government or governmental authority or person purporting to act under the authority thereof, seizure under legal process of attempted seizure, incorrect or insufficient marking, numbering or addressing of Containers or other packages or description of the contents, failure of the Merchant to procure consular, Board of Health or other certificates to accompany the Goods or to comply with laws or regulations of any kind imposed with respect to the Goods by the authorities at any port or place or any act or omission of the Merchant. The Carrier's lien shall survive delivery and may be enforced by private or public sale and without notice.

g) The Merchant shall defend, indemnify and hold harmless the Carrier, any Participating carrier, independent contractor, their agents and servants, against any loss, damage, claim, liability or expense whatsoever arising from any breach of the provisions of

this Clause 7, or from any cause in connection with the Goods for which the Carrier is not responsible.

8. CONTAINERS.

a) Goods may be stowed by the Carrier in or on Containers, and may be stowed with other goods. Containers, whether stowed by the Carrier or received fully stowed, may be carried on or under deck without notice, and the Merchant expressly agrees that cargo stowed in a Container and carried on deck is considered for all legal purposes to be cargo stowed under deck. Goods stowed in Containers on deck shall be subject to the legislation referred to in Clause 4, hereof and will contribute in General Average, and receive compensation in General Average, as the case may be.

b) The Terms and Conditions of this Bill of Lading shall govern the responsibility of the Carrier with respect to the supply of a container to the Merchant.

c) If a Container has been stuffed by or on behalf of the Merchant, the Carrier, any Participating Carrier, all independent contractors and all persons rendering any service whatsoever hereunder shall not be liable for any loss or damage to the Goods, Containers or other packages or to any other goods caused (1) by the manner in which the Container has been stuffed and its contents secured, (2) by the suitability of the Goods for carriage in Containers or for the type of Container requested by and furnished to the Merchant, or (3) condition of the Container furnished, which the Merchant acknowledges has been inspected by him or on his behalf before stuffing and sealing.

d) The Merchant shall defend, indemnify and hold harmless the Carrier, any Participating carrier, independent contractor, their agents and servants, against any loss, damage, claim, liability or expense whatsoever arising from one or more of the matters covered by a), b) and/or c) above.

9. CONTAINERS WITH HEATING OR REEFER APPARATUS.

Containers with temperature or atmosphere control apparatus for heating, refrigeration, ventilation or otherwise will not be furnished unless contracted for expressly in writing at time of booking and, when furnished, may entail increased Charges. In the absence of an express request, it shall be conclusively presumed that the use of a dry container is appropriate for the Goods.

Merchant must provide Carrier with desired temperature range in writing at time of booking and insert same on the face side of the Bill of Lading and, where so provided, Carrier is to exercise due diligence to maintain the temperature within a reasonable range while the Containers are in its care, custody and/or control of that of any Participating carrier or independent contractor. The Carrier does not accept any responsibility for the functioning of temperature or atmosphere controlled Containers not owned or leased by Carrier or for latent defects not discoverable by the exercise of due diligence.

Where the Container is stuffed or partially stuffed by or on behalf of the Merchant, the Merchant warrants that it has properly pre-cooled or pre-heated the Container, that the Goods have been properly stuffed and secured within the Container and that the temperature controls have been properly set prior to delivery of the Container to the Carrier, or any Participating carrier or independent contractor, their agents and servants. The Merchant accepts responsibility for all damage or loss of whatsoever nature resulting from a breach of any of these warranties, including but not limited to other cargo consolidated in the Container with the Merchant's Goods or to any other cargo, property or person, damaged or injured as a result thereof, and the Merchant agrees to defend, indemnify and hold the Carrier, Participating carriers and independent contractors, their agents and servants, harmless from and against all claims, suits, proceedings and all other consequences thereof regardless of their nature and merit.

10. OPTION OF INSPECTION.

The Carrier and any Participating carrier shall be entitled, but under no obligation, to open any Container at any time and to inspect the contents. If it thereupon appears that the contents or any part thereof cannot safely or properly be carried or carried further, either at all or without incurring any additional expense, the Carrier and Participating carrier may abandon the transportation thereof and/or take any measures and/or incur any reasonable additional expenses to continue the Carriage or to store the Goods, which storage shall be deemed to constitute due delivery under this Bill of Lading. The Merchant shall indemnify the Carrier, any Participating carrier, independent contractor, their agents and servants, against any reasonable additional Charges so incurred.

11. DECK CARGO.

Deck cargo (except that carried in Containers on deck) and live animals are received and carried solely at Merchant's risk (including accident or mortality of animals), and the Carrier will not, in any event, be liable for any loss or damage for or from which he is exempt, immune or exonerated by applicable law, or from any other cause whatsoever not due to the fault of the Carrier, any warranty of seaworthiness in the premises being hereby waived, and the burden of proving liability being in all respects upon the Merchant. Except as may be otherwise provided, such shipments shall be deemed Goods and shall be subject to all Terms and Conditions of this Bill of Lading.

12. METHODS AND ROUTES OF TRANSPORTATION.

With respect to the Goods or Containers or other packages, the Carrier may at any time and without notice to the Merchant:

- use any means of transport (water, land and/or air) or storage whatsoever;
- forward, transship or retain on board or carry on another vessel or conveyance or by any other means of transport than that named on the reverse side hereof;
- carry Goods on or under deck at its option;
- proceed by any route in its sole and absolute discretion and whether the nearest, most direct, customary or advertised route or in or out of geographical relation;
- proceed to or stay at any place whatsoever once or more often and in any order or until calling at any port, whether scheduled or not;
- store, vanned or devanned, at any place whatsoever, ashore or afloat, in the open or covered;
- proceed with or without pilots;
- carry livestock, contraband, explosives, munitions, warlike stores, dangerous or hazardous Goods or Goods of any and all kinds;
- drydock or stop at any unscheduled or unadvertised port for bunkers, repairs or for any purpose whatsoever;
- discharge and require the Merchant to take delivery, vanned or devanned;
- comply with any orders, directions or recommendations given by any government or authority or by any person or body acting or purporting to act with the authority of any government or authority or having under the terms of the insurance on the Vessel or other conveyance employed by the Carrier the right to give such orders, directions or recommendations;
- take any other steps or precautions as may appear reasonable to the Carrier under the circumstances.

The liberties set out in subdivisions a) through l) may be invoked for any purpose whatsoever even if not connected with the Carriage covered by this Bill of Lading, and any action taken or omitted to be taken, and any delay arising therefrom, shall be deemed to be within the contractual and contemplated Carriage and not be an unreasonable deviation.

In no circumstance whatsoever shall the Carrier be liable for direct, indirect or consequential loss or damage caused by delay.

13. MATTERS AFFECTING PERFORMANCE.

In any situation whatsoever and whatsoever occurring and whether existing or anticipated before commencement of, during or after the Carriage, which in the judgment of the Carrier is likely to give rise to any hindrance, risk, capture, seizure, detention, damage, delay, difficulty or disadvantage or loss to the Carrier or any part of the Goods, or make it unsafe, imprudent, impracticable or unlawful for any reason to receive, keep, load, carry or discharge them or any part of them or to commence or continue the Carriage or disembark passengers at the Port of Discharge or of the usual or intended place of discharge or delivery, or to give rise to danger, delay or difficulty of whatsoever nature in proceeding by the usual or intended route, the Carrier and any Participating carrier, independent contractor, their agents and servants, without notice to the Merchant, may decline to receive, keep, load, carry or discharge the Goods, or may discharge the Goods and may require the Merchant to take delivery and, upon failure to do so, may warehouse them at the risk and expense of the Merchant and Goods or may forward or transship them as provided in this Bill of Lading, or the Carrier may retain the Goods on board until the return of the Vessel to the Port of Loading or to the Port of Discharge or any other point or until such time as the Carrier deems advisable and thereafter discharge them at any place whatsoever. In such event, as hereby provided, such shall be at the risk and expense of the Merchant and Goods, and such action shall constitute complete delivery and performance under this contract, and the Carrier shall be free from any further responsibility. For any services rendered as hereinabove provided or for any delay or expense to the Vessel or Carrier caused as a result thereof, the Carrier shall, in addition to full Charges, be entitled to reasonable extra compensation, and shall have a lien on the Goods for same. Notice of disposition of the Goods shall be sent to the Merchant named in this Bill of Lading within a reasonable time thereafter.

All actions taken by the Carrier hereunder shall be deemed to be within the contractual and contemplated Carriage and not be an unreasonable deviation.

14. DELIVERY.

If delivery of the Goods or Containers or other packages or any part thereof is not taken by the Merchant when and where and at such time and place as the Carrier is entitled to have the Merchant take delivery, whether or not the Goods are damaged, they shall be considered to have been delivered to the Merchant, and the Carrier may, at its option, subject to its lien and without notice, elect to have same remain where they are or, if containerized, devanned and sent to a warehouse or other place, always at the risk and expense of the Merchant and Goods.

If the Goods are stowed within a Container owned or leased by the Carrier, the Carrier shall be entitled to devan the contents of any such Container, whereupon the Goods shall be considered to have been delivered to the Merchant, and the Carrier may, at its

option, subject to its lien and without notice, elect to have same remain where they are or sent to a warehouse or other place, always at the risk and expense of the Merchant and Goods.

At ports or places where by local law, authorities or custom, the Carrier is required to discharge cargo to lighters or other craft or where it has been so agreed or where wharves are not available which the Vessel can get to, be at, lie at, or leave, always safely afloat, or where conditions prevailing at the time render discharge at a wharf dangerous, imprudent or likely to delay the Vessel, the Merchant shall promptly furnish lighters or other craft to take delivery alongside the Vessel at the risk and expense of the Merchant and the Goods. If the Merchant fails to provide such lighters or other craft, Carrier, acting solely as agent for the Merchant, may engage such lighters or other craft at the risk and expense of the Merchant and the Goods. Discharge of the Goods into such lighters or other craft shall constitute proper delivery, and any further responsibility of Carrier with respect to the Goods shall thereupon terminate.

15. CHARGES, INCLUDING FREIGHT.

The Charges payable hereunder have been calculated on the basis of particulars furnished by or on behalf of the Merchant. The Carrier shall, at any time, be entitled to inspect, reweigh, remeasure or revalue the contents, and if any of the particulars furnished by the Merchant are found to be incorrect, the Charges shall be adjusted accordingly, and the Merchant shall be responsible to pay the correct Charges and all expenses incurred by the Carrier in checking said particulars or any of them.

Charges shall be deemed earned on acceptance of the Goods or Containers or other packages for shipment by or on behalf of the Carrier and shall be paid by the Merchant in full, without any offset, counterclaim or deduction, cargo and/or vessel or other conveyance lost or not lost, and shall be non-refundable in any event.

The Merchant shall remain responsible for all Charges, regardless whether the Bill of Lading states, in words or symbols, that it is "Prepaid," "To be Prepaid" or "Collect."

In arranging for any services with respect to the Goods, the Carrier shall be considered the exclusive agent of the Merchant for all purposes, and any payment of Charges to other than the Carrier shall not, in any event, be considered payment to the Carrier.

The Merchant shall defend, indemnify and hold the Carrier, any Participating carrier, independent contractor, their agents and servants, harmless from and against all liability, loss, damage and expense which may be sustained or incurred relative to the above.

16. CARRIER'S LIEN.

The Carrier shall have a lien on the Goods, inclusive of any Container owned or leased by the Merchant, as well as on any Charges due any other person, and any documents relating thereto, which lien shall survive delivery, for all sums due under this contract or any other contract or undertaking to which the Merchant was party or otherwise involved, including, but not limited to, General Average contributions, salvage and the cost of recovering such sums, inclusive of attorney's fees. Such lien may be enforced by the Carrier by public or private sale at the expense of and without notice to the Merchant.

The Merchant agrees to defend, indemnify and hold the Carrier, any Participating carrier, independent contractor, their agents and servants, harmless from and against all liability, loss, damage or expense which may be sustained or incurred by the Carrier relative to the above, and the Merchant agrees to submit to the jurisdiction of any court, tribunal or other body before whom the Carrier may be brought, whether said proceedings is of a civil or criminal nature.

17. BULK CARGO.

The weight or quantity of any bulk cargo inserted in this Bill of Lading is the weight or quantity as ascertained by a third party other than the Carrier, and the Carrier makes no representation with regard to the accuracy thereof. This Bill of Lading shall not be deemed evidence against the Carrier of receipt of bulk cargo of the weight or quantity so inserted in the Bill of Lading.

18. GOLD, SILVER, ETC.

Gold, silver, specie, bullion or other valuables, including those named or described in Sec. 4281 of the Revised Statutes of the United States, will not be received by the Carrier unless their true character and value are disclosed to the Carrier and a special written agreement therefor has been made in advance, and will not, in any case, be loaded or landed by the Carrier. No such valuables shall be considered received by or delivered to the Carrier until brought aboard the ship by the shipper and put in the actual possession of, and a written receipt therefor is given by, the Master or other officer in charge. Such valuables will only be delivered by the Carrier aboard the ship on presentation of proper documentation and upon such delivery the Carrier's responsibility shall cease. If delivery is not so taken promptly after the ship's arrival at Port of Discharge, said valuables may be retained aboard or landed or carried on, solely at the risk and expense of the valuables and Merchant.

19. RUST.

It is agreed that superficial rust, oxidation or any like condition due to moisture, is not a condition of damage but is inherent to the nature of the Goods. Acknowledgement of receipt of the Goods in apparent good order and condition is not a representation that such conditions of rust, oxidation or the like did not exist on

receipt.

20. GENERAL AVERAGE.

a) If General Average is declared, it shall be adjusted according to the York/Antwerp Rules of 1994 and all subsequent amendments thereto from time to time made, at any place at the option of any person entitled to declare General Average, and the Amended Jason Clause as approved by BIMCO is to be considered as incorporated herein, and the Merchant shall provide such security as may be required in this connection.

b) Notwithstanding a) above, the Merchant shall defend, indemnify and hold harmless the Carrier and any Participating carrier, their agents and servants, in respect of any claim (and any expense arising therefrom) of a General Average nature which may be made against the Carrier and/or any Participating carrier and shall provide such security as may be required in this connection.

c) Neither the Carrier nor any Participating carrier shall be under any obligation to take any steps whatsoever to collect security for General Average contributions due to the Merchant.

21. LIMITATION OF LIABILITY.

Except as otherwise provided in this Clause or elsewhere in this Bill of Lading, in case of any loss or damage to or in connection with cargo exceeding in actual value the equivalent of \$500 lawful money of the United States, per package, or in case of cargo not shipped in packages, per shipping unit, the value of the cargo shall be deemed to be \$500 per package or per shipping unit. The Carrier's liability, if any, shall be determined on the basis of a value of \$500 per package or per shipping unit or pro rata in case of partial loss or damage, unless the nature of the cargo and valuation higher than \$500 per package or per shipping unit shall have been declared by the Merchant before shipment and inserted in this Bill of Lading, and extra freight paid if required. In such case, if the actual value of the cargo per package or per shipping unit shall exceed such declared value, the value shall nevertheless be deemed to be declared value and the Carrier's liability, if any, shall not exceed the declared value.

The words "shipping unit" shall mean each physical unit or piece of cargo not shipped in a package, including articles or things of any description whatsoever, except cargo shipped in bulk, and irrespective of the weight or measurement unit employed in calculating freight and related charges.

As to cargo shipped in bulk, the limitation applicable thereto shall be the limitation provided in Section 1304(5) of COGSA, or such other legislation, convention or law as may be compulsorily applicable, and in no event shall anything herein be construed as a waiver of limitation as to cargo shipped in bulk.

Where a Container is not stuffed by or on behalf of the Carrier or the parties characterize the Container as a package or a lump sum freight is assessed, in any of these events, each individual such Container, including in each instance its contents, shall be deemed a single package and Carrier's liability limited to \$500 with respect to each such package, except as otherwise provided in this Clause or elsewhere in this Bill of Lading with respect to each such package. In the event this provision should be held invalid during that period in which compulsory legislation shall apply of its own force and effect, such as during the tackle-to-tackle period, it shall nevertheless apply during all non-compulsory periods such as, but not limited to, all periods prior to loading and subsequent to discharge from the Vessel for which the Carrier remains responsible.

Where compulsory applicable legislation provides a limitation less than \$500 per package or shipping unit, such lesser limitation shall apply and nothing herein contained shall be construed as a waiver of a limitation less than \$500.

Further, where a lesser monetary limitation is applicable, such as during handling by a Participating carrier or independent contractor and damage occurs during its or their period of care, custody, control and/or responsibility, the Carrier shall be entitled to avail itself of such lesser limitation.

22. NOTICE OF CLAIM: TIME FOR SUIT.

As to any loss or damage presumed to have occurred during the Carrier's period of responsibility, the Carrier must be notified in writing of any such loss or damage or claim before or at the time of discharge/removal of the Goods by the Merchant or, if the loss or damage is not then apparent, within 3 consecutive days after discharge/delivery or the date when the Goods should have been discharged/delivered. If not so notified, discharge, removal or delivery, depending upon the law applicable, shall be prima facie evidence of discharge/delivery in good order by the Carrier of such Goods.

In any event, the Carrier shall be discharged from all liability of whatsoever nature unless suit is brought within 1 year after delivery of the Goods or the date when the Goods should have been delivered, provided however, that if any claim should arise during a part of the transport which is subject by applicable law and/or tariff and/or contract to a shorter period for notice of claim or commencement of suit, any liability whatsoever of the Carrier shall cease unless proper claim is made in writing and suit is brought within such shorter period.

Suit shall not be deemed "brought" unless jurisdiction shall have been obtained over the Carrier by service of process or by an agreement to appear. In the event this provision should be held invalid during that period in which compulsory legislation shall

apply of its own force and effect, such as during the tackle-to-tackle period, it shall nevertheless apply during all non-compulsory periods during which the Carrier remains responsible for the Goods.

23. LAW AND JURISDICTION.

a) Governing law shall be in accordance with Clause 4, hereof.

b) Jurisdiction

All disputes in any way relating to this Bill of Lading shall be determined by the United States District Court for the Southern District of New York to the exclusion of the jurisdiction of any other courts in the United States or the courts of any other country PROVIDED ALWAYS that the Carrier may in its absolute and sole discretion invoke or voluntarily submit to the jurisdiction of any other court which, but for the terms of this Bill of Lading, could properly assume jurisdiction to hear and determine such disputes, but such shall not constitute a waiver of the terms of this provision in any other instance.

24. NON-WAIVER AND SEPARABILITY.

Nothing in this Bill of Lading shall operate to deprive the Carrier of any statutory protection or any defense, immunity, exemption, limitation of exoneration from liability conferred in the laws of the United States, or of any other country whose laws may be applicable. The Terms and Conditions of this Bill of Lading (including all the terms and conditions of the carrier's applicable tariff or tariffs incorporated herein by virtue of Clause 2 above) shall be separable, and if any part or term hereof shall be held invalid, such holding shall not affect the validity or enforceability of any other part or term hereof.

EXHIBIT B

STATE OF GEORGIA

COUNTY OF COBB

DECLARATION

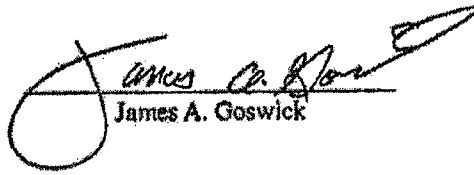
James A. Goswick, speaking under penalty of perjury pursuant to 28 U.S.C. Section 1746(2), declares as follows:

1. I, James A. Goswick, am of sound mind and am competent to make this Declaration. The statements made by me in this Declaration are true to the best of my personal knowledge. I have given this Declaration freely and voluntarily.
2. I am a Pick-up & Delivery ("P&D") Driver for Southeastern Freight Lines, Inc. (SEFL) in Atlanta, Georgia and have been employed with SEFL for over seven years. I work out of SEFL's West Atlanta Service Center.
3. In May of 2012, SEFL was contacted regarding a freight pickup at the Coweta County Airport;
4. That on or about May 8, 2012, another SEFL driver was sent to the Coweta County Airport to pick up freight but was unable to do so because the freight was not properly packaged for shipment;
5. The following day, May 9, 2012, I was sent to pick up freight from Coweta County Airport and picked up two steel crates containing airplane engines. The two crates had steel bars and straps securing both engines. As reflected on the attached Bill of Lading and Delivery Receipt, the crated engines were the only two items that I picked up and took possession of on May 9, 2012. (Attachment A.)
6. I understand that someone claims to have also given me a box with paper logs and further claim that I placed this box in the cab of my truck. This is not accurate. As I said above, the two crated engines were the only items that I received. I did not receive or take possession of a box with paper logs;
7. Everything I took possession of that day is listed on Attachment A. I did not and would not put anything in the cab of my truck because it is against Southeastern's Safety Rules and Regulations.

Moreover, I would not take possession of any items that were not properly labeled, marked, and packaged for shipment.

8. Again, I recall picking up the two crates but did not pick up a box or anything else.

Executed this 4th day of February 2013 in Atlanta, Georgia.


James A. Goswick